

## The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 TIMOTHY DIETZ,  
10 Plaintiff,  
11 v.  
12 MIDLAND CREDIT MANAGEMENT INC.,  
13 Defendant.

Case No. 3:14-cv-05114-RBL

## **DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**

15 Defendant Midland Credit Management, Inc. ("MCM") answers plaintiff's "Verified  
16 Complaint for Relief" ("the complaint") as follows:

## **NATURE OF THE ACTION**

18       1.     Admits that this purports to be an action for money damages, but denies  
19 any liability and further denies that plaintiff is entitled to recover any damages.

20 2. Denies the allegations in paragraph 2.

## PARTIES

22       3.     MCM lacks sufficient information to form a belief as to the truth of the  
23 allegations in paragraph 3 and, therefore, denies those allegations.

24           4.     Admits the allegations in paragraph 4.

## **DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**

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## **JURISDICTION AND VENUE**

2       5.     Admits that the court generally has subject matter jurisdiction over this  
3 case, but denies that jurisdiction is based on the reasons alleged in paragraph 5 of the  
4 complaint. MCM denies the remaining allegations in paragraph 5.

5        6.      Admits that venue is proper in this court, but denies the remaining  
6 allegations in paragraph 6.

7        7.      Admits that the court generally has subject matter jurisdiction over claims  
8 for violation of the Telephone Consumer Protection Act, 47 U.S.C. §227(b)(3) (“TCPA”),  
9 but denies the remaining allegations in paragraph 7.

10        8.      Admits that venue is proper in this court. MCM denies the remaining  
11 allegations in paragraph 8, based in part on a lack of sufficient information to form a  
12 belief as to the truth of those allegations.

13        9.      Admits that venue is proper in this court. MCM denies the remaining  
14 allegations in paragraph 9, based in part on a lack of sufficient information to form a  
15 belief as to the truth of those allegations.

16        10.      Admits that it does business in the State of Washington, and that it  
17 generally is in the business of collecting delinquent accounts. MCM denies the  
18 remaining allegations in paragraph 10.

19        11. Admits that the court generally has subject matter jurisdiction over this  
20 case, but denies that jurisdiction is based on the reasons alleged in paragraph 11 of the  
21 complaint. MCM denies the remaining allegations in paragraph 11.

22           12. Admits that the court generally has subject matter jurisdiction over this  
23 case, but denies that jurisdiction is based on the reasons alleged in paragraph 12 of the  
24 complaint. MCM denies the remaining allegations in paragraph 12.

25 13. Denies the allegations in paragraph 13.

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## **DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**

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1        14. Admits that venue is proper in this court, but denies the remaining  
2 allegations in paragraph 14.

## BACKGROUND

4 15. Denies the allegations in paragraph 15.

5 16. Denies the allegations in paragraph 16.

6           17. Denies the allegations in paragraph 17, based in part on a lack of  
7 sufficient information to form a belief as to the truth of those allegations.

8           18. MCM lacks sufficient information to form a belief as to the truth of the  
9 allegations in paragraph 18 and, therefore, denies those allegations.

10 19. Denies the allegations in paragraph 19.

11           20. Denies the allegations in paragraph 20.

**“VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT 47  
U.S.C. § 227(b)(1)(A)(iii) WILLFUL NON-COMPLIANCE BY MIDLAND  
CREDIT MANAGEMENT, INC.”**

15 21. As to paragraph 21, MCM admits and denies as alleged above.

16           22. Admits that the provisions of 47 U.S.C. § 227(b)(1)(A)(iii) speak for  
17 themselves, but denies the remaining allegations in paragraph 22.

18           23. Except as specifically admitted above, MCM denies each and every  
19 allegation of the complaint.

## AFFIRMATIVE DEFENSES

21        24. Plaintiff fails to state factual matter sufficient to constitute a claim against  
22 MCM that is plausible on its face.

25 Plaintiff consented to the conduct for which he seeks relief

24           26. Plaintiff waived his rights to obtain any or all of the relief sought in the  
25 Complaint

1        27. MCM relied in good faith on the information provided by the creditor of  
2 the account at issue.

3        28. The telephone calls MCM allegedly made, and the equipment it used  
4 to make those alleged calls, are not regulated by the TCPA.

5        29. Plaintiff failed to use reasonable diligence to mitigate his damages, if  
6 any.

7           30. Any alleged violations of the TCPA, if proven, were not willful and  
8 knowing.

9           31. Any damages are offset by amounts that plaintiff owes on the delinquent  
10 account at issue.

## **RESERVATION OF RIGHT TO AMEND**

12        32. MCM reserves its right to amend and to add further defenses or claims as  
13 relevant information becomes available.

14 WHEREFORE, MCM prays for judgment in its favor; for dismissal of plaintiff's  
15 claims with prejudice; for its attorney fees, costs and disbursements; and for any further  
16 relief that the court decides is proper.

17 DATED: February 13, 2014

COSGRAVE VERGEER KESTER LLP

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/s/ Robert E. Sabido

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## **CERTIFICATE OF SERVICE**

2 I hereby declare under penalty of perjury that I served a true and correct copy of  
3 the foregoing **DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES** on the date  
4 indicated below by:

- 5       electronic mail,
  - 6       mail with postage prepaid, deposited in the US mail at Portland, Oregon,
  - 7       hand delivery,
  - 8       facsimile transmission,
  - 9       overnight delivery,

10 I further certify that said copy was placed in a sealed envelope delivered as  
11 indicated above and addressed to plaintiff at the address listed below:

12 Timothy Dietz  
2503 34th Avenue  
13 Longview, WA 98632  
Plaintiff *Pro Se*

DATED: February 13, 2014

/s/ Robert E. Sabido  
Robert E. Sabido